

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32

(Stockton, California)

UNIVERSITY OF THE PACIFIC

Employer¹

and

Case 32-RC-4697

UNIVERSITY OF THE PACIFIC POLICE
OFFICERS ASSOCIATION, A MEMBER
OF CALIFORNIA ORGANIZATION OF
POLICE AND SHERIFFS

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon petitions duly being filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,² the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.³

¹ The Employer's and Petitioner's names appear as stipulated at the hearing.

² The parties' briefs were considered.

³ At the hearing, both parties executed a written stipulation agreeing, inter alia, that there is no contract bar to the instant proceeding. However, the Petitioner asserted at the hearing that there is an on-going collective bargaining relationship with the Employer. The Employer denied the Petitioner's assertion. Nonetheless, the Employer claimed there is a contract bar to the proceeding and moved to have the instant petition dismissed in response to the Petitioner's assertion. The hearing officer did not specifically rule on the Employer's motion. In support of its assertion, the Petitioner introduced a document entitled "Memorandum of Understanding", dated April 5, 1984, and a memorandum dated October 11, 1990,

2. The parties stipulated, and I find, that the Employer, a California corporation, is a private university located in Stockton, California. During the twelve months immediately preceding the hearing, the Employer received gross annual revenues in excess of one million dollars. During that same period, it purchased and received in excess of \$50,000 worth of goods from suppliers located outside the State of California. Based on the above, I find that the Employer is engaged in commerce within the meaning of the Act. Accordingly, the assertion of jurisdiction is appropriate herein.

3. Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

4. The Petitioner claims to represent certain employees of the Employer, and a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The Petitioner seeks to represent all full-time and regular part-time sergeants, police officers, and police telecommunicators (commonly referred to as dispatchers) employed by the Employer at its Stockton, California campus. Contrary to the Petitioner, the Employer contends that the sergeants are statutory supervisors and the dispatchers are not “guards” within the meaning of Section 9(b)(3) of the Act. It

addressed to “All Public Safety Sworn Personnel and Dispatchers” from the Acting Director of the Department of Public Safety. The October 11th memorandum was prepared on University letterhead. Both documents are unsigned and they make vague references to prior agreements presumably between the Employer and Petitioner. No witness testified about the Memorandum of Understanding and none testified about any prior collective bargaining relationship between the parties. Moreover, the Employer denies any knowledge of any prior collective bargaining relationship with Petitioner. With respect to the October 11 memorandum, it was shown to only one witness and she could not recall ever seeing that document or ever having discussed it with anyone. In these circumstances, the Petitioner failed to establish that there has ever been any collective bargaining relationship between the Employer and Petitioner. Therefore, the Employer’s motion to dismiss the instant petition is denied.

contends, therefore, that dispatchers should be excluded from the petition-for unit. The Employer does not dispute that the police officers employed by the Employer are “guards” within the meaning of the Act and should be included in the unit.⁴

As part of its Public Safety Department, the Employer maintains a police force on its campus which provides law enforcement and crime prevention services throughout the university. The police department is headed by the chief of police and the associate director of the police department (commonly referred to as the “lieutenant”). There are six police officers, two sergeants, and four dispatchers in the police department. The sergeants report directly to the lieutenant and they are responsible for overseeing the police officers on their respective shifts. The dispatchers report to the administrative services coordinator who is responsible for the communications and records sections of the police department. The administrative services coordinator reports directly to the lieutenant.⁵

Sergeants

The police department operates 24 hours per day. The police officers work on three shifts: day (8:00 a.m. to 4:00 p.m.), swing (4:00 p.m. to 12:00 a.m.), and graveyard (12:00 a.m. to 8:00 a.m.). The police sergeants are assigned to overlapping “cover” shifts. Sergeants Tony Fields and Wayne Germann work 7:00 p.m. to 3:00 a.m. and 9:00

⁴ The Petitioner seeks to represent a unit of guards employed by the Employer at its Stockton campus. Section 9(b)(3) of the Act precludes the Board from certifying a labor organization as the collective bargaining representative of a unit of guards “if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.” At the hearing, the Employer accepted the Petitioner’s representation that the California Organization of Police and Sheriffs does not represent any employees other than guards. The Employer also agreed that there is no issue regarding the Petitioner’s ability to represent the petitioned-for guard unit in light of these representations. Moreover, there is no record evidence that the Petitioner is affiliated directly or indirectly with an organization which admits to its membership employees other than guards. Accordingly, I find that the Petitioner is qualified to represent a unit consisting exclusively of statutory guards.

p.m. to 5:00 a.m., respectively. One police officer works during the first part of the sergeants' overlapping shifts (until 12:00 a.m.) and the remaining officers work during the balance of their respective shifts (beginning at 12:00 a.m.).⁶ Consequently, the officers who work on the swing and graveyard shifts regularly work without any "supervision" during their shifts. It is also common for the sergeants to work without any officers during part of their shifts due to the officers' vacations, compensatory time, or sick leave. During the day shift, the officers are supervised by the chief and the lieutenant.⁷

According to Lieutenant Jerry Houston, the sergeants are responsible for: supervising their respective shifts; training officers under their control; implementing department policies; managing their subordinates' work schedules and other work-time related matters; supervising officers in the field; and preparing performance evaluations for the officers who work under their control. With respect to their supervising duties, Sergeant Germann testified that they spend about 7 percent of their typical work day "supervising" employees and that this function essentially consists of monitoring officers' adherence to the Employer's policies and procedures and training them regarding the particular policies and procedures. In this regard, Sergeant Germann testified that he regards himself as a "lead person" who is available to answer questions

⁵ The police department is also apparently staffed by a locksmith, an alarm technician and another "technician" of some kind. There is no dispute that these positions should be excluded from the unit.

⁶ A fourth police officer is normally assigned to the work during part of the sergeants' work hours, but he is on extended medical leave.

⁷ The chief and lieutenant work 8:00 a.m. to 5:00 p.m. Thus, the police officers on swing and graveyard are unsupervised between 5:00 and 7:00 p.m. and 5:00 and 8:00 a.m. However, according to the Employer's policy manual, the "senior" officer on duty (based on the term of employment with the Employer) becomes the "Officer-In-Charge" in the absence or unavailability of a sergeant or higher ranking officer. The record established that in these circumstances the Officer-In-Charge takes on many of the same responsibilities of the sergeants and the other officers must follow the direction of the Officer-In-

and occasionally give direction to officers regarding the department policies and procedures. The record did not elaborate upon the specific types of directives the sergeants issue or the frequency of this occurrence. Officers can be disciplined for failing to follow a sergeant's directive, but they can also be guilty of insubordination for failing to follow the directive of an Officer-In-Charge.

Sergeants are responsible for training the new officers on their shift. According to Sergeant Germann, sergeants spend about 3 to 4 percent of their time training employees. Yet, regular police officers are also called upon to perform field training for new officers. The record was silent as to the frequency with which regular officers train other officers, although one of the officers is currently the "range master" for the officers. There is no contention that the regular police officers who engage in training functions are statutory supervisors. The record evidence also establishes that sergeants are consulted when the Employer is developing a new training course, but the record does not establish the degree of their participation in the development of the training.

The job description for sergeants has been revised twice since early-September 1999.⁸ According to Sergeant Germann, he was given a revised job description on about September 3 and a second revised job description on about October 14. He testified that the original job description and the two revised versions contain several inaccuracies regarding the duties and responsibilities of the sergeants.⁹ Germann also testified that

Charge. There is no contention, however, that the officers who have held this title are statutory supervisors.

⁸ All dates cited herein refer to 1999 unless otherwise indicated.

⁹ Lieutenant Houston and Sergeant Germann testified that the October 14 job description was inaccurate in several respects. Among other things, they testified that the percentage figures cited in the job description to show what portion of the sergeants' work day was spent performing certain listed duties were incorrect. Moreover, the revised job descriptions which were ostensibly based on written responses submitted by sergeants over the past one or two years do not accurately reflect the sergeants' responses. Thus, Sergeant

prior to about October 14, he spent about 85 to 90 percent of his work day on foot patrol or responding to calls, but on about October 14 he was directed by the chief to spend fewer hours on foot patrol and more time performing “supervisory” work in the office such as calculating the foot patrol of officers, a function which is otherwise unexplained in the record.¹⁰ Germann was not sure of the number of hours he now spends on foot patrol but he still believes it is over two hours per day. The record does not establish how many hours Sergeant Fields currently spends on foot patrol or responding to calls.

Lieutenant Houston testified that the sergeants are responsible for making sure that the police officers in the field are adhering to department policies and providing service within the expected levels. In this regard, they are “expected to observe, correct, report back” to the lieutenant if there is a problem they need to discuss. According to Houston, the sergeants are expected to take “corrective action” if they observe a violation of department policy but they are directed to go to the lieutenant if it becomes an ongoing problem.¹¹ According to Sergeant Germann, sergeants simply inform officers that they are in violation of a department policy and determine why they violated the policy. If they violate the same policy a second time, the sergeants are authorized to issue verbal counseling forms. The verbal counseling forms are kept by the sergeant so they can refer to them when preparing the officers’ performance evaluations and they may be a factor in determining the ratings the officers receive in their evaluations. According to Germann,

Germann testified that all of the job descriptions included duties and responsibility that did not apply to the sergeants.

¹⁰ The record does not establish what other “supervisory” work the sergeants are now assigned to do in the office, other than calculating the foot patrol of officers, looking at statistics, preparing reports, and working on “projects”. Thus, it has not been established that the additional “supervisory” duties are, in fact, supervisory within the meaning of the Act.

the verbal counseling forms (as well as the evaluations) are training tools rather than a disciplinary action. He also testified that he has never been told that he has the authority to discipline employees or to issue written warnings.

An officer can appeal a verbal counseling through the university's grievance mechanism. However, the record shows that officers have a wide latitude in the kinds of complaints they can grieve. At the first level, officers are expected to present their grievances to their respective sergeant and attempt to resolve them at that level. Prior to October 14, officers could take their grievances to the lieutenant and/or chief if the sergeant could not resolve them and the grievances would be sent to the department of human resources if the lieutenant and chief failed to resolve the matter. After October 14, the grievances go directly to university Human Resources if the sergeant is unable to resolve the matter. However, before and after October 14, sergeants have been precluded from dealing with grievances involving officer misconduct or when discipline is a possibility. These type of grievances went directly to the lieutenant prior to October 14 and now go directly to Human Resources. Sergeants are also required to follow established policies in resolving any grievances they are permitted to address. Officers-In-Charge may also address officers' grievances in the absence of a sergeant.

There is no evidence that the sergeants have the authority to hire, fire, suspend, promote, layoff, and/or recall employees, and there is no evidence that they have ever made any recommendations regarding these actions. They do not have the authority to transfer officers but can recommend assigning them coveted responsibilities, such as the

¹¹ Houston testified that sergeants can issue verbal and written warnings but he could not give any examples when asked to do so at the hearing. Moreover, the Employer did not present any documentary evidence of any verbal or written warnings issued by sergeants.

“range master” duties. However, the record does not establish how often their recommendations are followed.¹²

Sergeants have no authority to reward employees or to grant bonuses. They can write letters of commendation and attach the letters to the performance evaluations they prepare for officers. However, there is no evidence that the letters of commendations (or the evaluations) have any impact on the officers’ employment status. In fact, according to Germann, the letters of commendations are simply “attaboys”.

New employees are assigned to a particular sergeant (or the lieutenant) for training. As part of the training, the sergeants prepare written evaluations for the new officers every week for the first two or three months of field training. After the field training is completed, the sergeants evaluate the new officers once per month until their probationary period is completed. The lieutenant reviews these evaluations and can make revisions to the evaluations. The record does not establish how often he changes these evaluations. After the new officers complete their probationary period, the sergeants prepare annual performance evaluations for the officers who work with them. The annual evaluations are not considered complete until they are reviewed and approved by the lieutenant and chief. The record establishes that the lieutenant and chief can make revisions to the annual evaluations but they have not done so with respect to any evaluation prepared by Sergeant Germann. The record does not establish how often they have changed the evaluations prepared by other sergeants.¹³

¹² Germann testified that he has made some recommendations in the past but he could not recall if all of his recommendations were followed, but the ones he could remember were approved by the Employer. Some of his recommendations to permit officers to attend schools (to receive training for skills that are prerequisites to certain officer positions) have been rejected by the Employer.

¹³ Portions of the evaluations are based on “follow-up forms” prepared by the lieutenant and not on the sergeants’ personal knowledge. The lieutenant prepares these forms to document deficiencies in particular

The record evidence is insufficient to establish that annual performance evaluations have a significant impact on the officers' terms and conditions of employment. Lieutenant Houston and Sergeant Germann testified that the evaluations are used as "training tools" and neither could categorically state whether the evaluations were used by the Employer to affect the officers' employment status. In this regard, Houston testified that the evaluations "can be" used as a reference when deciding whether to grant a wage increase or to promote an officer, but he did not elaborate about the frequency that evaluations are relied upon or even referred to when making these decisions. Moreover, with respect to probationary evaluations, there is no evidence that sergeants have ever recommended that a probationary employee not be retained or that his/her probationary period be extended. In these circumstances, it has not been demonstrated that performance evaluations have a significant impact, if any, on the officers' working conditions.¹⁴

Sergeants are authorized to grant overtime to officers. However, the record established that they are rarely called upon to grant overtime and their decision requires very little, if any, independent judgement since department policy dictates the circumstances when an officer is authorized to work overtime. For example, officers are required to continue a criminal investigation beyond their regular working hours, and

crime reports prepared by police officers. The record established that the lieutenant is primarily responsible for reviewing the officers' crime reports and that sergeants rarely have an opportunity to do so. In fact, Sergeant Germann estimated that he reviews fewer than ten crime reports each year, out of the approximately 800 reports that are generated each year in the department.

¹⁴ In its brief, the Employer contends that sergeants have the authority to extend the probationary period of new officers. In support of its contention, the Employer cites Lieutenant Houston's testimony that it is "possible" that a sergeant may have had a role in extending a probationary period. However, the lieutenant could not cite a single example of such an occurrence and his testimony was insufficient to establish that sergeants have that authority. Sergeant Germann testified that he has never made any recommendation whether to retain a probationary employee and that the Chief was responsible for making that decision.

department policy establishes the minimum number of police officers that must work on a particular shift. Thus, the sergeants simply need to make sure that their shift is covered by the required number of officers even if it results in overtime for officers.¹⁵ Sergeants can also approve time-off requests or requests to leave work early but their decision to approve or disapprove the requests is again based strictly on the staffing requirements set forth in the department's policies. Any deviation from the staffing policies must be approved by the lieutenant or chief. In these circumstances, it is evident the sergeants' role in approving overtime and work absences is clerical in nature.

The sergeants prepare the officers' shift assignments which are based on a rotating list that contains all of the officers' names. When the list was originally prepared, the officers' names were put in order of seniority with the Employer. Each officer selects the shift that he/she wants to work for a six month period. If more than one officer requests the same shift, it is assigned to the officer whose name appears higher on the list. The order of the list changes every six months so that the name at the top of the list moves to the bottom and all the other names move up one step. New officers are placed at the bottom of the list so they have the least priority in selecting a shift. Lieutenant Houston could not think of any instance when the shift assignment list was not followed in assigning shifts and there is no evidence that a sergeant has ever assigned an officer to another shift based on his own discretion. Thus, sergeants simply follow the list when establishing the shift assignments every six months.¹⁶

¹⁵ Regular police officers can also apparently grant overtime since the Officer-In-Charge is authorized to call-in off duty personnel for assistance if he/she deems it necessary. Thus, the off duty personnel would undoubtedly be entitled to overtime.

¹⁶ Sergeants also coordinate vacation schedules and they present the final schedule to the lieutenant for approval.

Sergeants and officers share many of the same terms and conditions of employment. Most of their work day is spent on foot patrol or responding to calls. They are dispatched to calls by the dispatchers and they are responsible for providing back up for officers in the field when necessary. They work in the same area of the Public Safety Facility although the sergeants share a separate office. No one in the department uses a time clock. They are both entitled to overtime pay even though sergeants are classified as “exempt” employees. Sergeants and officers are required to maintain the same training requirements although sergeants are also required to complete 80 hours of supervisory training within their one year probationary period. However, this requirement is not absolute since a probationary sergeant can get an exemption if he/she is unable to meet the deadline because there are no schools offering the supervisory training during the probationary period.

There are also some significant differences in the terms and conditions of the sergeants and officers. The sergeants’ starting salaries are about 23 percent higher than the officers. Sergeants attend staff meetings with the chief, lieutenant, and administrative services coordinator. Department policy and issues are discussed at these meetings. However, these staff meetings are conducted less than once per month and the sergeants’ roles at these meetings appear to be as conduits between management and the officers. Thus, the sergeants conduct meetings with officers, “sometimes” on a monthly basis, to relay information about department policy to the officers who work during their shifts since the chief and lieutenant rarely see those officers.¹⁷

¹⁷ Lieutenant Houston testified that sergeants sometimes have an “involvement” and “input” in preparing department policy. The record does not elaborate upon their specific role in developing policy, but it did establish that all officers have “input” in the development of policy. Thus, the sergeants are directed to

Dispatchers

Catherine Bialek, the Administrative Services Coordinator, oversees the work of the four dispatchers who also work for the university's Public Safety Department. Only one dispatcher works each shift.¹⁸ Dispatchers are responsible for taking emergency and non-emergency telephone calls received by the police department from employees, students, and visitors to the university in order to assess if they need to dispatch an officer to the call. They can also dispatch someone from the university's "physical plant" to handle maintenance issues after normal business hours. They can also contact various off-campus agencies such as the fire department, paramedics, the Stockton Police Department, and the Sheriffs Office if they have an emergency. Dispatchers are also called upon to contact police agencies inside and outside California to gather information in order to verify a warrant.

The dispatchers' primary duty is to maintain communication with the officers in the field and to maintain logs of all the activity of each officer. Bialek testified that the dispatchers "essential duty" is to protect the safety of the officer. She described the dispatchers as the "lifeline" for the officers since they are responsible for knowing their whereabouts at all times and they send backup if an officer is in danger. The dispatchers determine which officer to dispatch on a call or even whether to contact an outside police agency for backup. Moreover, the dispatcher provides the officers with information

solicit input from the officers regarding specific policy and to relay their responses at staff meetings with the chief and lieutenant.

¹⁸ In addition to the day, swing and graveyard shifts, one of the dispatchers works a "cover" shift wherein he/she covers for all of the other dispatchers on their scheduled days off.

necessary for them to perform their duties. For example, the dispatchers run warrant checks and driver license checks for the officers in the field and they maintain a daily log of all activity on their shift. Officers review the dispatcher's daily logs at the beginning of their shift to ascertain the activity that transpired on the prior shift.¹⁹

The dispatchers are also responsible for dealing with walk-in traffic into the police department. In this regard, they gather information or complaints and answer questions regarding department policies. They do not take reports of any criminal activity from walk-in traffic. Instead, they would contact an officer to come take the report. Frequently, the visitors come to the department to contest traffic citations or to report lock and key problems. In these cases, the dispatchers take the information and arrange for the appropriate person to contact the visitor regarding the issue or problem. Dispatchers are authorized to issue temporary parking permits, as are other departments throughout the university, and they issue vendor permits.²⁰

After 5:00 p.m., the doors to the Public Safety Building are locked and the dispatchers control the ingress and egress to the building. A surveillance camera and intercom are located at the entrance to the building and the dispatcher controls the door electronically from the dispatcher desk. A second surveillance camera is located at the end of the hall by the entrance. These security measures were installed at the request of the dispatchers due to safety concerns they had since they frequently work alone in the

¹⁹ The university requires the daily logs as part of the "students' right to know" all police activity. The logs are also used to generate various unspecified reports. While the record does not fully discuss how these reports are used, it is evident that the daily logs are an essential part of a monitoring system of police officer activity on campus. Thus, it is not surprising that officers occasionally argue with the dispatchers over the accuracy of certain entries in the logs. However, the dispatchers have final authority over the entries in the logs.

building during the swing and graveyard shifts. According to Bialek, the surveillance system provides security for the dispatchers and the inside of the building.

Dispatchers also monitor the holding cells in the police department through another surveillance camera whenever there is a prisoner in one of the holding cells. They keep their monitor on at all times when there is a prisoner and they check their monitor sporadically when an officer is in the cell area with a prisoner. When an officer leaves the holding cell area, the dispatcher is solely responsible for maintaining surveillance of the prisoner for the prisoner's own safety. Thus, the dispatcher can call an officer to return to the cell in case of an emergency or he/she could contact an outside agency for assistance (i.e., a paramedic or the Stockton Police Department).

Dispatchers and officers share limited common duties. In addition to monitoring prisoners in holding cells, both can fingerprint students and teachers. Officers can cover for dispatchers when they take a short break or even a meal break but it is left to the discretion of the officer if he/she is willing to do so.²¹ The record evidence does not establish how frequently this occurs. In all other respects, the dispatchers' duties are separate and distinct from those of the police officers. They cannot engage in any of the following actions: enforce the Employer's rules and regulations; arrest or restrain anyone; investigate accidents or crimes; search individuals; and/or go out on patrols. Moreover, the dispatchers do not carry any weapons.²²

ANALYSIS

²⁰ Parking permits are issued in order to know how to contact the vehicle's owner. This serves to protect the vehicle and allows the university to perform maintenance work on university property when the vehicle is an obstacle.

²¹ The dispatchers take their meal breaks at their desks if no officer is willing to relieve them and they can take a portable two-way radio with them during a restroom break.

²² Dispatchers and officers wear uniforms but it was not established whether they wear identical uniforms.

Supervisory Status of the Sergeants

Section 2(11) of the Act defines a supervisor as an individual having authority, in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

In enacting Section 2(11) of the Act, Congress distinguished between supervisory personnel who are vested with “genuine management prerogatives”, and “straw bosses, leadmen, and set-up men,” who are entitled to the Act’s protection. See *Bell Aerospace*, 416 U.S. at 280-281 (quoting S. Rep. No. 105, 80th Cong., 1st Sess. 4 (1947)). Statutory supervisory status is not established unless it is shown that employees possess one of the indicia of authority and in the process of exercising that authority, utilize independent judgment.

The facts adduced at the hearing establish that the sergeants are not supervisors under the Act. There is no evidence that they have independently hired, laid off, recalled, promoted, discharged, or adjusted grievances or effectively recommended such action. Moreover, the record evidence establishes that the sergeants do not have authority to transfer or suspend employees or to effectively recommend such action. There is no evidence that sergeants have ever transferred employees or even recommended transfers to other positions. Instead, there was some testimony that Sergeant Germann has recommended that officers be assigned certain coveted job assignments and job training, but some of his recommendations were not followed. More importantly, the evidence did

not establish how many times he has made these type of recommendations or how often his recommendation were followed, and there was no testimony regarding Sergeant Fields role in recommending transfers, if any. See *Custom Mattress Manufacturing, Inc.*, 327 NLRB No. 30 (1998). In support of its assertion that the sergeants effectively *recommend* the suspension of officers, the Employer cites the testimony of Lieutenant Houston. The lieutenant testified that the sergeants have never suspended any employee but he believed that “if there were a situation that justified and managers were not around, they could certainly do that.” His testimony clearly demonstrates that sergeants have never suspended any employee and his belief that they may have the authority to do so in certain undefined circumstances is insufficient to rebut Sergeant Germann’s specific testimony that they do not have that authority.

The record is insufficient to establish that the sergeants engage in or effectively recommend any of the other supervisory indicia listed under Section 2(11) of the Act. With respect to rewarding and disciplining employees, the sergeants can issue letters of commendation and verbal counseling forms and they can refer to them when preparing the officers’ performance evaluations. However, the record demonstrates that the sergeants use the letters of commendation, verbal counseling forms, and evaluations they prepare as training tools and there is insufficient evidence to establish that these documents ultimately affect the officers’ job status. See *Children’s Farm Home*, 324 NLRB 61 (1997).

With respect to adjusting grievances, the sergeants have a very limited role. They can attempt to resolve a grievance at the first step but they must follow established department policy in attempting to resolve the issue and they cannot deal with any

grievance that relates to misconduct or that can result in discipline. Thus, the record does not establish that the sergeants deal with issues that have a substantial impact on an employee's job status at the grievance level. Moreover, regular officers who hold the Officer-In-Charge position can also address grievances at the first step and there is no contention that they are statutory supervisors.

Finally, with respect to assigning and directing employees, the record fails to establish that the sergeants exercise their own judgement in assigning and directing employees. Thus, shift assignments are set according to a priority list that rotates every six months and the sergeants merely refer to the list in assigning the officers' shifts.²³ Officers are required to follow the directives of the sergeants but the record does not specify the kinds of directives that the sergeants issue or if they exercise this authority on a regular or sporadic basis. Thus, it cannot be concluded that the sergeants exercise "independent judgement" rather than merely following established policy in directing employees. Absent detailed, specific evidence of the use of independent judgement, mere inference or conclusionary statements without supporting evidence are insufficient to establish supervisory status. *Children's Farm Home*, supra at 65.²⁴

Based on the foregoing, and the record as a whole, it has not been established that the sergeants possess or exercise supervisory authority. The party who raises the issue that a classification should be excluded bears the burden of demonstrating that it should be excluded, and if the evidence of supervisory status is inconclusive, the party raising

²³ Sergeants must also follow established staffing requirements in approving time-off requests or assigning overtime. The Officer-In-Charge may also exercise these responsibilities in the absence of a sergeant.

²⁴ In addition, regular officers holding the Officer-In-Charge title are also authorized to direct officers and, as noted, neither party contends that they are statutory supervisors.

the question has not met its burden. *Int'l Center of Integrative Studies*, 297 NLRB 601 n.5 (1990); *Ohio Masonic Home*, 295 NLRB 390 n. 7 (1989).²⁵

Guard Status of the Dispatchers

Section 9(b)(3) of the Act defines a guard as “any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer’s premises” Thus, an individual qualifies as a guard if he enforces rules to protect the employer’s property or protects the safety of persons on the employer’s premises.

In the instant case, Catherine Bialek testified that the dispatchers’ “essential duty” is to protect the safety of the police officers. Moreover, the record establishes that the dispatchers are closely involved in protecting the safety of other persons on the campus and enforcing security as are the police officers. Thus, they take emergency calls from students, teachers, and visitors to the campus and dispatch emergency assistance to them if necessary. They are also solely responsible for the safety of prisoners when there are no officers in the holding cell area. In exercising their duties, the dispatchers must be cognizant of the department policies and they keep daily logs that are relied upon by the university and students to monitor the police officers’ activity. In these circumstances, there is no question that the dispatchers’ job duties fall within the definition of guards under Section 9(b)(3).

²⁵ In the absence of primary indicia of supervisory status as enumerated in Section 2(11) of the Act, it is unnecessary to consider the secondary indicia in the record. *S.D.I. Operating Partners, L.P.*, 321 NLRB 111, fn. 2 (1996).

The dispatchers' other job functions also establish that they are guards. They monitor closed circuit cameras at the entrance and main hall way to the Public Safety Building in order to control who enters the building for their own protection and to protect the inside of the building. They also monitor the closed circuit camera in the holding cell area whenever a prisoner is occupying one of the cells even when an officer is present. In monitoring the closed circuit cameras, especially when a prisoner is in the holding cell area by himself, dispatchers are responsible for being alert to any situation or problem which needs responsive action and for reporting such incidents to the proper authorities. Employees performing similar functions have been found to be guards under the Act. See *Rhode Island Hospital*, 313 NLRB 343 (1993); *MGM Grand Hotel, Las Vegas*, 274 NLRB 139 (1985).²⁶

In arguing that the dispatchers are not guards, the Employer cites cases wherein employees performing job functions similar to some of the dispatchers' job functions were held not to constitute guards under the Act. In taking this approach, the Employer ignores the dispatchers' overall job responsibilities and functions. Thus, the Employer fails to cite a single case involving dispatchers. Instead, the employees involved in the cited cases were clerks, doorpersons, elevator operators, checkers, courier-guards, and receptionists. Therefore, the cases cited by the Employer are clearly inapposite since the

²⁶ In its brief, the Employer's contends that the dispatchers' role in monitoring the holding cell area is "only incidental" to the dispatcher's primary functions of dispatching and relaying information for the officers. Contrary to the Employer's contention, the record demonstrates that this is an essential function of the dispatcher's since they are solely responsible for a prisoner's safety when no officer is in the holding cell area. The record does not establish how often dispatchers are called upon to monitor the holding cell area.

employees involved in those cases engaged primarily in non-guard like duties, did not wear uniforms, and/or had separate supervision from the security officers.²⁷

Conversely, *Republic Aviation Corporation*, 106 NLRB 91 (1953), involved facts much more similar to the instant case. Among other things, the “receptionists” in *Republic Aviation Corporation*, were part of the employer’s police department, they wore uniforms, and they came under the supervision of the chief of police and the lieutenant. Moreover, the receptionists were found to be guards under the Act even though there was no finding that they enforced rules and regulations or confronted employees or others in carrying out their duties. Instead, they simply reported violations of rules and regulations for the protection of personnel and property. The facts in the instant case provide an even stronger case for finding that the dispatchers are guards since they are responsible for the safety of the police officers, prisoners, and others at the campus.

Based on the foregoing, and the record as a whole, I conclude that the dispatchers/telecommunicators are guards within the meaning of the Act.

The following employees of the Employer constitute an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time police officers, sergeants, and dispatchers/telecommunicators employed by the Employer at its Stockton, California campus, excluding all other employees, locksmiths, alarm technicians, and supervisors as defined in the Act.

There are approximately 12 employees in the bargaining unit.

²⁷ In *Pony Express Courier Corp.*, 310 NLRB 102 (1993), cited by the Employer, the courier-guards were held not to be guards because they were essentially drivers who delivered customer property “ordinarily of no intrinsic value to the world at large.” Moreover, it was concluded that the courier drivers’ basic function was not the protection of valuable customer property. Thus, that case is inapposite to the instant case where the dispatchers are directly responsible for the safety of the officers and other individuals at the campus.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the units found appropriate at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations.²⁸ Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible to vote shall vote whether or not they desire to be represented by, UNIVERSITY OF THE PACIFIC POLICE OFFICERS ASSOCIATION, A MEMBER OF CALIFORNIA ORGANIZATION OF POLICE AND SHERIFFS.

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election

should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969); North Macon Health Care 359 Facility, 315 NLRB 359, 361 fn. 17 (1994). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all the eligible voters shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the NLRB Region 32 Regional Office, Oakland Federal Building, 1301 Clay Street, Suite 300N, Oakland, California 94612-5211, on or before, December 8, 1999. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by December 15, 1999.

Dated at Oakland, California this 1st day of December, 1999

/s/ James S. Scott

James S. Scott, Regional Director
National Labor Relations Board
Region 32
1301 Clay Street, Suite 300N

²⁸ Please read the attached notice requiring that election notices be posted at least three (3) days prior to the election.

Oakland, California 94612-5211

32-1187

177-8520-0100

440-1760-5340-3325